

SPECIAL CIVIL APPLICATION No 2298 of 1999

Hon'ble MR.JUSTICE A.L.DAVE

=====

- [illegible]

5. Whether it is to be circulated to the Civil Judge? : NO

DIPAKBHAI G PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR HH PATEL ASST GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/12/1999

### ORAL JUDGEMENT

1. The petitioner was detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 (PASA Act for short) by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad on March 20, 1999 in exercise of powers under Section 3(1) of the PASA Act.

The grounds of detention indicate that the detaining authority took into consideration two prohibition cases registered against the petitioner. The authority also considered two statements of the anonymous witnesses and came to the conclusion that the petitioner is a bootlegger and his activities are detrimental to public order. The authority also considered that the statements made by the anonymous witnesses were correct and that they and they had genuine apprehension from the petitioner and therefore there was no need to exercise power under Section 9(2) of the PASA Act.

2. The petitioner challenges the detention on various grounds. The main ground is that the statements of the witnesses were recorded on 19th and 20th March 1999, statements were verified on March 20, 1999 and the order was also passed on the very same day. It is submitted that there was no time for the detaining authority to genuinely consider the need for exercise of powers under Section 9(2) of the PASA Act. Another contention that is raised is in respect of delay. It is contended that representation to the detaining authority was made on 27-3-1999 and it was received by the detaining authority on 31-3-1999. It is contended that it is forwarded to the Government on 7-4-1999 and therefore there is a delay of about one week in forwarding the representation to the Government. This would vitiate the continued detention. It is therefore urged that the petition may be allowed.

3. The respondents have not filed any affidavit in reply.

4. Mr. H.H. Patel, learned A.G.P. appearing for the respondents had submitted that so far as the dates of recording of statements, verification thereof and passing of order is concerned they are correct. He submits that quick action on the part of the authorities may not be taken as non application of mind.

5. Mr. Patel submitted that the representation which was received by the detaining authority on 31st March 1999 was sent to the P.C.B. on 6-4-1999 and by the P.C.B. to the Government on 9-4-1999. He submitted that it was sent to the PASA Board also and the PASA Board in turn sent it to the Government and ultimately the Government decided the representation on 19-4-1999 and therefore there is no delay.

6. Considering the aforesaid contentions it appears

that the petition deserves to be allowed on the first ground itself, namely, that the subjective satisfaction recorded by the detaining authority for exercise of powers under Section 9(2) of the PASA Act cannot be accepted as genuine. The statements were recorded on 19th and 20th March 1999. They were verified on 20th March, 1999 and the order was passed on that very day. This indicates that the entire exercise of recording of statements, preparation of proposal for detention by the sponsoring authority, receipt of proposal, verification of the statement, consideration of material before the detaining authority and passing of the order took place on 20th March, 1999, i.e., on a single day!

7. While exercising powers under Section 9(2) of the PASA Act the authority is required to consider public interest vis-a-vis the interests of the detenu and his right of making an effective representation guaranteed by the Constitution of India. The authority has to consider the material and arrive at a subjective satisfaction that the fear expressed by the witnesses is genuine, and thereafter it has to strike a balance between the interests/right of the petitioner and the public interest and decide whether it is a fit case for exercise of powers under Section 9(2) of the PASA Act. This entire exercise would require time. In absence of any affidavit by the detaining authority this court is at loss to know, understand and appreciate as to how the entire exercise of recording of the statements, preparation for the proposal of detention, verification of the statements, consideration of genuineness of the fear expressed by the witnesses, the need for exercise of power under Section 9(2), the grounds of detention and the order of detention could have been undertaken on a single day of 20th March 1999. In view of this, therefore the exercise of powers under Section 9(2) of the PASA Act cannot be said to be genuine. This court derives support on this view from the case of K.C. Kuhar v. State of Gujarat as reported in 1993(2) GLR 1659.

8. At this stage Ms. Pahwa does not press for a verdict on the second point raised by her regarding delay.

9. In view of the above discussion the petition deserves to be allowed and the same is allowed. The petitioner be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)